

House Engrossed Senate Bill

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**KEN BENNETT
SECRETARY OF STATE**

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CHAPTER 144

SENATE BILL 1136

AN ACT

AMENDING SECTIONS 32-2181.02 AND 32-2183, ARIZONA REVISED STATUTES; RELATING
TO THE SALE OF SUBDIVIDED LANDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-2181.02, Arizona Revised Statutes, is amended to
3 read:

4 32-2181.02. Exempt sales and leases

5 A. The following are exempt under this article:

6 1. The sale or lease in bulk of six or more lots, parcels or
7 fractional interests to one buyer in one transaction.

8 2. The sale or lease of lots or parcels of one hundred sixty acres or
9 more.

10 B. The following are exempt from section 32-2181, subsection A and
11 section 32-2183, subsection A:

12 1. The sale or lease of parcels, lots, units or spaces that are zoned
13 and restricted to commercial or industrial uses.

14 2. The sale or lease of lots or parcels located in a single platted
15 subdivision by a subdivider if:

16 (a) A public report has been issued within the past two years pursuant
17 to this article on the subdivision lots or parcels.

18 (b) The subdivision meets all current requirements otherwise required
19 of a subdivision under this article.

20 (c) The method of sale or lease of lots or parcels meets all current
21 requirements under this article.

22 (d) The lots or parcels are included on a recorded subdivision plat
23 that is approved by a municipal or county government.

24 (e) All roads within the subdivision, all utilities to the lots or
25 parcels being offered for sale or lease and all other required improvements
26 within the subdivision, other than a residence to be built, are complete,
27 paid for and free of any blanket encumbrances.

28 (f) The roads, utilities or other improvements are not complete, but
29 the completion of all improvements is assured pursuant to section 32-2183,
30 subsection D- F.

31 (g) Except for matters relating to ownership, there have been no
32 material changes to the information set forth in the most recent public
33 report issued for the subdivision lots that would require an amendment to the
34 public report.

35 (h) No owner of a ten per cent or greater interest, subdivider,
36 director, partner, agent, officer or developer of the subdivision has:

37 (i) Been convicted of a felony or any crime involving theft,
38 dishonesty, violence against another person, fraud or real estate, regardless
39 of whether the convictions were subsequently expunged.

40 (ii) Had a civil judgment entered against the person in a case
41 involving allegations of misrepresentation, fraud, breach of fiduciary duty,
42 misappropriation, dishonesty or, if the subject matter involved real
43 property, securities or investments.

44 (iii) Had a business or professional license, including a real estate
45 license, denied, suspended or revoked or voluntarily surrendered a business
46 or professional license during the course of an investigative or disciplinary

1 proceeding or other disciplinary action taken in this state or any other
2 state.

3 (i) The sale of the subdivided lands violates no laws or ordinances of
4 any governmental authority.

5 (j) Before the buyer's or lessee's execution of a purchase contract or
6 lease, the subdivider has provided the buyer or lessee with a copy of the
7 most recent public report on the lot and has taken a receipt from the buyer
8 for the copy.

9 (k) The subdivider has provided to the buyer or lessee, along with the
10 public report, a signed statement that the subdivider has reviewed and is in
11 compliance with the terms of the exemption provided in this paragraph.

12 (l) Before sale or lease, the subdivider has notified the
13 commissioner, on a form provided by the department, of the subdivider's
14 intent to sell or lease lots or parcels pursuant to this paragraph. The
15 notice shall include:

16 (i) The name, address and telephone number of the subdivider.

17 (ii) The name, address and telephone number of any real estate broker
18 retained by the subdivider to make sales or leases of the lots.

19 (iii) The name and location of the subdivision.

20 (iv) The most recent subdivision public report reference number on the
21 lots.

22 (v) The completion status of subdivision improvements.

23 3. The conveyance to a person who previously conveyed the lot to a
24 home builder for the purpose of constructing a dwelling for the person.

25 4. The sale or lease by a person of individual lots or parcels that
26 were separately acquired by the person from different persons and that were
27 not acquired for the purpose of development if:

28 (a) The lots or parcels are not located in a platted subdivision.

29 (b) Each lot or parcel bears the same legal description that it bore
30 when the lot or parcel was acquired by the person.

31 (c) The seller or lessor is in compliance with all other applicable
32 state and local government requirements.

33 5. The sale of an improved lot in a subdivision that is located
34 outside of this state if:

35 (a) The subdivision is located within the United States and the sale
36 is exempt from the interstate land sales full disclosure act (P.L. 90-448; 82
37 Stat. 590; 15 United States Code sections 1701 through 1720).

38 (b) The subdivider is required by the state where the subdivision is
39 located to deliver a public report or equivalent disclosure document to
40 prospective purchasers and the subdivider delivers the report or equivalent
41 disclosure document.

42 6. The sale of an improved lot in a subdivision located in this state
43 where five or more sales were previously made by the seller if:

44 (a) The sale is the seller's first or second sale in the subdivision
45 within the previous twelve month period.

1 (b) The subdivision is located within the corporate limits of a town
2 or city.

3 (c) Electricity and telephone service are complete and available to
4 the improved lot.

5 (d) Water and sewage service is complete and available to the improved
6 lot.

7 (e) Streets and roads located outside of the subdivision provide
8 permanent access to the subdivision and are complete and maintained by the
9 county, town or city, or by a legally created and operational property
10 owners' association.

11 (f) Streets within the subdivision are dedicated, provide permanent
12 access to the lot, are complete to town or city standards and are maintained
13 by the town or city or, in the case of private streets, a legally created and
14 operational property owners' association accepts the responsibility of
15 perpetual maintenance.

16 (g) All subdivision common area improvements, including landscaping,
17 recreational facilities and other jointly used and maintained improvements,
18 are complete and maintained by a legally created and operational property
19 owners' association.

20 (h) The purchaser's down payment, earnest money, deposit or other
21 advanced money is placed and held in a neutral escrow depository in this
22 state until escrow closes and the deed is delivered to the purchaser.

23 (i) Within the previous twelve months the seller has not had an
24 ownership interest in more than two lots in the subdivision, including an
25 interest by option, an agreement for sale, a beneficial interest under a
26 trust or a purchase contract.

27 C. Nothing in this section shall be construed to increase, decrease or
28 otherwise affect any rights or powers granted the commissioner under this
29 chapter.

30 D. This section does not apply to lands on which the commissioner has
31 issued orders pursuant to sections 32-2154 and 32-2157 and section 32-2183,
32 subsection ~~J~~ M unless the commissioner has issued a public report on those
33 lands subsequent to the date of the orders.

34 E. Nothing in this section shall be construed to increase, to decrease
35 or to otherwise affect any rights or powers granted to political subdivisions
36 of this state with respect to their jurisdictions.

37 Sec. 2. Section 32-2183, Arizona Revised Statutes, is amended to read:

38 32-2183. Subdivision public reports; denial of issuance;
39 unlawful sales; voidable sale or lease; order
40 prohibiting sale or lease; investigations; hearings;
41 summary orders

42 A. Upon examination of a subdivision, the commissioner, unless there
43 are grounds for denial, shall issue to the subdivider a public report
44 authorizing the sale or lease in this state of the lots, parcels or
45 fractional interests within the subdivision. The report shall contain the
46 data obtained in accordance with section 32-2181 and any other information

1 which the commissioner determines is necessary to implement the purposes of
2 this article. If any of the lots, parcels or fractional interests within the
3 subdivision are located within territory in the vicinity of a military
4 airport or ancillary military facility as defined in section 28-8461, under a
5 military training route as delineated in the military training route map
6 prepared pursuant to section 37-102, under restricted air space as delineated
7 in the restricted air space map prepared pursuant to section 37-102 or
8 contained in the military electronics range as delineated in the military
9 electronics range map prepared pursuant to section 37-102, the report shall
10 include, in bold twelve point font block letters on the first page of the
11 report, the statements required pursuant to section 28-8484, subsection A,
12 section 32-2183.05 or section 32-2183.06 and, if the department has been
13 provided a map prepared pursuant to section 28-8484, subsection B or section
14 37-102, the report shall include a copy of the map. The military airport
15 report requirements do not require the amendment or reissuance of any public
16 report issued on or before December 31, 2001 or on or before December 31 of
17 the year in which the lots, parcels or fractional interests within a
18 subdivision become territory in the vicinity of a military airport or
19 ancillary military facility. The military training route report requirements
20 do not require the amendment or reissuance of any public report issued on or
21 before December 31, 2004. The restricted air space report requirements do
22 not require the amendment or reissuance of any public report issued on or
23 before December 31, 2006. The military electronics range report requirements
24 do not require the amendment or reissuance of any public report issued on or
25 before December 31, 2008. The commissioner shall require the subdivider to
26 reproduce the report, make the report available to each prospective customer
27 and furnish each buyer or lessee with a copy before the buyer or lessee signs
28 any offer to purchase or lease, taking a receipt therefor.

29 B. This section shall not be construed to require a public report
30 issued sixty or fewer days prior to the filing of the military electronics
31 range map prepared pursuant to section 37-102 to meet the military
32 electronics range notification requirements of this section.

33 C. A public report issued sixty-one or more days after the filing of
34 the military electronics range map prepared pursuant to section 37-102 shall
35 meet all of the requirements of subsection A of this section.

36 D. Notwithstanding subsection A of this section, a subdivider may
37 elect to prepare a final public report for use in the sale of improved lots
38 as defined in section 32-2101, as follows:

39 1. The subdivider shall prepare the public report and provide a copy
40 of the report to the commissioner with the submission of the notification
41 required by sections 32-2181 and 32-2184 and shall comply with all other
42 requirements of this article.

43 2. An initial filing fee of five hundred dollars or an amended filing
44 fee of two hundred fifty dollars shall accompany the notification required by
45 paragraph 1 of this subsection.

1 3. The department shall assign a registration number to each
2 notification and public report submitted pursuant to this subsection and
3 shall maintain a database of all of these submissions. The subdivider shall
4 place the number on each public report.

5 4. On receipt of the notification and public report, the department
6 shall review and issue within ten business days either a certification that
7 the notification and public report are administratively complete or a denial
8 letter if it appears that the application or project is not in compliance
9 with all legal requirements, that the applicant has a background of
10 violations of state or federal law or that the applicant or project presents
11 an unnecessary risk of harm to the public. If the commissioner has received
12 the notification and public report but has not issued a certification or a
13 denial letter within ten business days pursuant to this paragraph, the
14 notification and public report are administratively complete.

15 5. A subdivider may commence sales or leasing activities as permitted
16 under this article after obtaining a certificate of administrative
17 completeness from the commissioner.

18 6. Before or after the commissioner issues a certificate of
19 administrative completeness or, if applicable, after the notification and
20 public report are deemed to be administratively complete pursuant to
21 paragraph 4 of this subsection, the department may examine any public report,
22 subdivision or applicant that has applied for or received the certificate.
23 If the commissioner determines that the subdivider or subdivision is not in
24 compliance with any requirement of state law or that grounds exist under this
25 chapter to suspend, deny or revoke a public report, the commissioner may
26 commence an administrative action under section 32-2154 or 32-2157. If the
27 subdivider immediately corrects the deficiency and comes into full compliance
28 with state law, the commissioner shall vacate any action that the
29 commissioner may have commenced pursuant to section 32-2154 or 32-2157.

30 7. The department shall provide forms and guidelines for the
31 submission of the notification and public report pursuant to this section.

32 E. The commissioner may suspend, revoke or deny issuance of a public
33 report on any of the following grounds:

34 1. Failure to comply with this article or the rules of the
35 commissioner pertaining to this article.

36 2. The sale or lease would constitute misrepresentation to or deceit
37 or fraud of the purchasers or lessees.

38 3. Inability to deliver title or other interest contracted for.

39 4. Inability to demonstrate that adequate financial or other
40 arrangements acceptable to the commissioner have been made for completion of
41 all streets, sewers, electric, gas and water utilities, drainage and flood
42 control facilities, community and recreational facilities and other
43 improvements included in the offering.

44 5. Failure to make a showing that the lots, parcels or fractional
45 interests can be used for the purpose for which they are offered.

1 6. The owner, agent, subdivider, officer, director or partner,
2 subdivider trust beneficiary holding ten per cent or more direct or indirect
3 beneficial interest or, if a corporation, any stockholder owning ten per cent
4 or more of the stock in the corporation has:

5 (a) Been convicted of a felony or misdemeanor involving fraud or
6 dishonesty or involving conduct of any business or a transaction in real
7 estate, cemetery property, time-share intervals or membership camping
8 campgrounds or contracts.

9 (b) Been permanently or temporarily enjoined by order, judgment or
10 decree from engaging in or continuing any conduct or practice in connection
11 with the sale or purchase of real estate or cemetery property, time-share
12 intervals, membership camping contracts or campgrounds, or securities or
13 involving consumer fraud or the racketeering laws of this state.

14 (c) Had an administrative order entered against him by a real estate
15 regulatory agency or security regulatory agency.

16 (d) Had an adverse decision or judgment entered against him involving
17 fraud or dishonesty or involving the conduct of any business or transaction
18 in real estate, cemetery property, time-share intervals or membership camping
19 campgrounds or contracts.

20 (e) Disregarded or violated this chapter or the rules of the
21 commissioner pertaining to this chapter.

22 (f) Controlled an entity to which subdivision (b), (c), (d) or (e)
23 applies.

24 7. Procurement or an attempt to procure a public report by fraud,
25 misrepresentation or deceit or by filing an application for a public report
26 that is materially false or misleading.

27 8. Failure of the declaration for a condominium created pursuant to
28 title 33, chapter 9, article 2 to comply with the requirements of section
29 33-1215 or failure of the plat for the condominium to comply with the
30 requirements of section 33-1219. The commissioner may require an applicant
31 for a public report to submit a notarized statement signed by the subdivider
32 or an engineer or attorney licensed to practice in this state certifying that
33 the condominium plat and declaration of condominium are in compliance with
34 the requirements of sections 33-1215 and 33-1219. If the notarized statement
35 is provided, the commissioner is entitled to rely on this statement.

36 9. Failure of any blanket encumbrance or valid supplementary agreement
37 executed by the holder of the blanket encumbrance to contain provisions that
38 enable the purchaser to acquire title to a lot or parcel free of the lien of
39 the blanket encumbrance, on completion of all payments and performance of all
40 of the terms and provisions required to be made or performed by the purchaser
41 under the real estate sales contract by which the purchaser has acquired the
42 lot or parcel. The subdivider shall file copies of documents acceptable to
43 the commissioner containing these provisions with the commissioner before the
44 sale of any subdivision lot or parcel subject to a blanket encumbrance.

45 10. Failure to demonstrate permanent access to the subdivision lots or
46 parcels.

1 11. The use of the lots presents an unreasonable health risk.

2 F. It is unlawful for a subdivider to sell any lot in a subdivision
3 unless one of the following occurs:

4 1. All proposed or promised subdivision improvements are completed.

5 2. The completion of all proposed or promised subdivision improvements
6 is assured by financial arrangements acceptable to the commissioner. The
7 financial arrangements may be made in phases for common community and
8 recreation facilities required by a municipality or county as a stipulation
9 for approval of a plan for a master planned community.

10 3. The municipal or county government agrees to prohibit occupancy and
11 the subdivider agrees not to close escrow for lots in the subdivision until
12 all proposed or promised subdivision improvements are completed.

13 4. The municipal or county government enters into an assurance
14 agreement with any trustee not to convey lots until improvements are
15 completed within the portion of the subdivision containing these lots, if the
16 improvements can be used and maintained separately from the improvements
17 required for the entire subdivision plat. The agreement shall be recorded in
18 the county in which the subdivision is located.

19 G. If the subdivision is within an active management area, as defined
20 in section 45-402, the commissioner shall deny issuance of a public report or
21 the use of any exemption pursuant to section 32-2181.02, subsection B unless
22 the subdivider has been issued a certificate of assured water supply by the
23 director of water resources and has paid all applicable fees pursuant to
24 sections 48-3772 and 48-3774.01, or unless the subdivider has obtained a
25 written commitment of water service for the subdivision from a city, town or
26 private water company designated as having an assured water supply by the
27 director of water resources pursuant to section 45-576 or is exempt from the
28 requirement pursuant to section 45-576.

29 H. In areas outside of active management areas, if the subdivision is
30 located in a county that has adopted the provision authorized by section
31 11-806.01, subsection F or in a city or town that has enacted an ordinance
32 pursuant to section 9-463.01, subsection O, the commissioner shall deny
33 issuance of a public report or the use of any exemption pursuant to section
34 32-2181.02, subsection B unless one of the following applies:

35 1. The director of water resources has reported pursuant to section
36 45-108 that the subdivision has an adequate water supply.

37 2. The subdivider has obtained a written commitment of water service
38 for the subdivision from a city, town or private water company designated as
39 having an adequate water supply by the director of water resources pursuant
40 to section 45-108.

41 3. The plat was approved pursuant to an exemption authorized by
42 section 9-463.01, subsection K, pursuant to an exemption authorized by
43 section 11-806.01, subsection G, paragraph 1, pursuant to an exemption
44 granted by the director of water resources under section 45-108.02 and the
45 exemption has not expired or pursuant to an exemption granted by the director
46 of water resources under section 45-108.03.

1 4. The subdivision received final plat approval from the city, town or
2 county before the requirement for an adequate water supply became effective
3 in the city, town or county, and there have been no material changes to the
4 plat since the final plat approval. If changes were made to the plat after
5 the final plat approval, the director of water resources shall determine
6 whether the changes are material pursuant to the rules adopted by the
7 director to implement section 45-108.

8 I. A subdivider shall not sell or lease or offer for sale or lease in
9 this state any lots, parcels or fractional interests in a subdivision without
10 first obtaining a public report from the commissioner except as provided in
11 section 32-2181.01 or 32-2181.02. Unless exempt, the sale or lease of
12 subdivided lands prior to issuance of the public report or failure to deliver
13 the public report to the purchaser or lessee shall render the sale or lease
14 rescindable by the purchaser or lessee. An action by the purchaser or lessee
15 to rescind the transaction shall be brought within three years of the date of
16 execution of the purchase or lease agreement by the purchaser or lessee. In
17 any rescission action, the prevailing party is entitled to reasonable
18 attorney fees as determined by the court.

19 J. ON A PRINT ADVERTISEMENT IN A MAGAZINE OR NEWSPAPER OR ON AN
20 INTERNET ADVERTISEMENT THAT ADVERTISES A SPECIFIC LOT OR PARCEL OF A
21 SUBDIVIDER, THE SUBDIVIDER SHALL INCLUDE A DISCLOSURE STATING THAT "A PUBLIC
22 REPORT IS AVAILABLE ON THE STATE REAL ESTATE DEPARTMENT'S WEBSITE".

23 ~~J.~~ K. Any applicant objecting to the denial of a public report,
24 within thirty days after receipt of the order of denial, may file a written
25 request for a hearing. The commissioner shall hold the hearing within twenty
26 days after receipt of the request for a hearing unless the party requesting
27 the hearing has requested a postponement. If the hearing is not held within
28 twenty days after a request for a hearing is received, plus the period of any
29 postponement, or if a proposed decision is not rendered within forty-five
30 days after submission, the order of denial shall be rescinded and a public
31 report issued.

32 ~~K.~~ L. On the commissioner's own motion, or when the commissioner has
33 received a complaint and has satisfactory evidence that the subdivider or the
34 subdivider's agent is violating this article or the rules of the commissioner
35 or has engaged in any unlawful practice as defined in section 44-1522 with
36 respect to the sale of subdivided lands or deviated from the provisions of
37 the public report, the commissioner may investigate the subdivision project
38 and examine the books and records of the subdivider. For the purpose of
39 examination, the subdivider shall keep and maintain records of all sales
40 transactions and funds received by the subdivider pursuant to the sales
41 transactions and shall make them accessible to the commissioner upon
42 reasonable notice and demand.

43 ~~L.~~ M. On the commissioner's own motion, or when the commissioner has
44 received a complaint and has satisfactory evidence that any person has
45 violated this article or the rules of the commissioner or has engaged in any
46 unlawful practice as defined in section 44-1522 with respect to the sale of

1 subdivided lands or deviated from the provisions of the public report or
2 special order of exemption, or has been indicted for fraud or against whom an
3 information for fraud has been filed or has been convicted of a felony,
4 before or after the commissioner issues the public report as provided in
5 subsection A of this section, the commissioner may conduct an investigation
6 of the matter, issue a summary order as provided in section 32-2157, or hold
7 a public hearing and, after the hearing, may issue the order or orders the
8 commissioner deems necessary to protect the public interest and ensure
9 compliance with the law, rules or public report or the commissioner may bring
10 action in any court of competent jurisdiction against the person to enjoin
11 the person from continuing the violation or engaging in or doing any act or
12 acts in furtherance of the violation. The court may make orders or
13 judgments, including the appointment of a receiver, necessary to prevent the
14 use or employment by a person of any unlawful practices, or which may be
15 necessary to restore to any person in interest any monies or property, real
16 or personal, that may have been acquired by means of any practice in this
17 article declared to be unlawful.

18 M- N. When it appears to the commissioner that a person has engaged
19 in or is engaging in a practice declared to be unlawful by this article and
20 that the person is concealing assets or self or has made arrangements to
21 conceal assets or is about to leave the state, the commissioner may apply to
22 the superior court, ex parte, for an order appointing a receiver of the
23 assets of the person or for a writ of ne exeat, or both.

24 N- O. The court, on receipt of an application for the appointment of
25 a receiver or for a writ of ne exeat, or both, shall examine the verified
26 application of the commissioner and other evidence that the commissioner may
27 present the court. If satisfied that the interests of the public require the
28 appointment of a receiver or the issuance of a writ of ne exeat without
29 notice, the court shall issue an order appointing the receiver or issue the
30 writ, or both. If the court determines that the interests of the public will
31 not be harmed by the giving of notice, the court shall set a time for a
32 hearing and require notice be given as the court deems satisfactory.

33 O- P. If the court appoints a receiver without notice, the court
34 shall further direct that a copy of the order appointing a receiver be served
35 on the person engaged in or engaging in a practice declared to be unlawful
36 under this article by delivering the order to the last address of the person
37 that is on file with the state real estate department. The order shall
38 inform the person that the person has the right to request a hearing within
39 ten days of the date of the order and, if requested, the hearing shall be
40 held within thirty days from the date of the order.

APPROVED BY THE GOVERNOR APRIL 23, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 26, 2010.